

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

FILED

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

OCT 04 2001

R. J. [Signature]
CLERK

FRANK CANDELARIA,

Plaintiff,

vs.

Civil No. 00-823 M/DJS

THE CITY OF ALBUQUERQUE, et al.,

Defendants.

**PROPOSED FINDINGS OF FACT
AND PROPOSED CONCLUSIONS OF LAW**

FINDINGS OF FACT

1. Frank Candelaria was lawfully employed by the City of Albuquerque at all times material to the complaint herein.
2. Frank Candelaria is currently employed by the City of Albuquerque and works for the Bernalillo County Detention Center.
3. Frank Candelaria first became employed by the City of Albuquerque on 2/11/1985.
4. Frank Candelaria was removed from probationary status in his employment with the City of Albuquerque on 8/11/1985.
5. The City of Albuquerque operates the Bernalillo County Detention Center.
6. Frank Candelaria is male.
7. Frank Candelaria enjoyed high seniority at his job with the City of Albuquerque.

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8. Frank Candelaria is a resident of the State of New Mexico.
9. The City of Albuquerque is a New Mexico municipal corporation formed under New Mexico law.
10. John Dantis is the director of the Bernalillo County Detention Center.
11. On or about October 29, 1999 the City of Albuquerque removed Frank Candelaria from a Transport Officer assignment because he was a male officer.
12. After October 29, 1999 the City of Albuquerque and John Dantis continued to discriminate in overtime assignments against Frank Candelaria because he is male.
13. The removal of Frank Candelaria from his assignment as a male Transport Officer was done without any change in the policy of the Bernalillo County Detention Center.
14. Beginning in October, 1999 and continuing to this time Frank Candelaria was denied assignments to the "Satellite" facility of the Bernalillo County Detention Center because he is male.
15. The refusal of the defendants to allow Frank Candelaria to work at the "Satellite" facility was done without any change in the policy of the Bernalillo County Detention Center and was done to discriminate against Frank Candelaria because of his gender, which is male.
16. On or about February 18, 2000 Frank Candelaria filed a Charge of Discrimination with the EEOC and the New Mexico Human Rights Commission.
17. Following his filing of a Charge of Discrimination with the EEOC and the New Mexico Human Rights Commission, the City of Albuquerque and John Dantis

have undertaken a campaign of retaliation against Frank Candelaria in order to punish him for bringing his EEOC Charge of Discrimination and this lawsuit.

18. Frank Candelaria was fully qualified to take the assignments that he was denied because of his gender.
19. Frank Candelaria was entitled to the assignments denied by way of the Union Contract and by way of his seniority under the contract.
20. Frank Candelaria has been unable to receive the overtime pay to which is entitled under the contract with the City and has been damaged because of his decrease in overtime pay.
21. The conduct of the City and John Dantis was egregious.
22. The conduct of the City and John Dantis was undertaken intentionally.
23. Frank Candelaria has suffered emotional damages because of the egregious intentional conduct of the City and John Dantis.
24. Frank Candelaria has undertaken his free speech rights on many occasions by bringing complaints against the City and John Dantis with the Labor Relations Board of the City of Albuquerque.
25. The City and John Dantis undertook to discriminate against Frank Candelaria and to give him unfavorable work assignments and to remove him from work assignments traditionally held by Frank Candelaria and the purpose of these discriminations was to restrain and retaliate against Frank Candelaria's exercise of his First Amendment Rights.
26. The speech that Frank Candelaria undertook was important and protected speech.
27. The City Labor Board has determined that the actions of the City and John Dantis

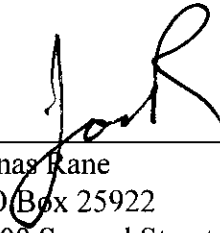
in removing Frank Candelaria from assignments was in violation of the City-Union contract.

CONCLUSIONS OF LAW

28. This Court has jurisdiction over the allegations of the plaintiff's complaint. Venue is proper in this Court.
29. The City of Albuquerque undertook illegal gender based discrimination against Frank Candelaria.
30. John Dantis undertook illegal gender based discrimination against Frank Candelaria.
31. There is no legal basis for the gender based discrimination undertaken against Frank Candelaria.
32. The City of Albuquerque and John Dantis retaliated against Frank Candelaria because of Candelaria's First Amendment speech and because he brought this EEOC complaint and this lawsuit.
33. The conduct of the City and John Dantis was constituted intentional infliction of emotional distress as a matter of law.
34. The unlawful discrimination and retaliation inflicted upon Frank Candelaria caused damages in fact and law.
35. The City of Albuquerque and John Dantis continue in their policy of unlawful gender discrimination against male employees such as Frank Candelaria.
36. The City and John Dantis should be enjoined from continuing discrimination in

violation of Title VII, the First Amendment and the contract between the City and Frank Candelaria.

Respectfully Submitted:

A handwritten signature in black ink, appearing to read 'Jonas Kane', written over a horizontal line.

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